

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 3004	DATE	6/10/2003
CASE TITLE	Robert Salerno vs. Joseph DiLeonardi etc. et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Memorandum Opinion and Order

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due ____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion and Order. Defendants' motion to dismiss is granted. Status hearing set for June 11, 2003 at 9:15am. is stricken.
- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.	U.S. DISTRICT COURT CLERK JUN 10 PM 2:29 FILED-ED 10 Date/time received in central Clerk's Office	number of notices	Document Number 10
<input type="checkbox"/> No notices required.		JUN 11 2003 date docketed	
<input type="checkbox"/> Notices mailed by judge's staff.		<i>[Signature]</i> docketing deputy initials	
<input type="checkbox"/> Notified counsel by telephone.		date mailed notice	
<input checked="" type="checkbox"/> Docketing to mail notices.		mailing deputy initials	
<input checked="" type="checkbox"/> Mail AO 450 form.			
<input type="checkbox"/> Copy to judge/magistrate judge.			
WAH	courtroom deputy's initials		

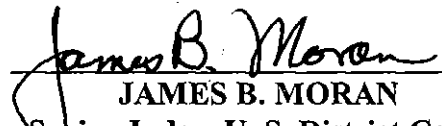
DISCUSSION


In deciding a Rule 12(b)(6) motion to dismiss or strike a pleading we must assume the truth of all well-pleaded allegations, making all inferences in the non-movant's favor. Sidney S. Arst Co. v. Pipefitters Welfare Educ. Fund, 25 F.3d 417, 420 (7th Cir. 1994). The court should dismiss a claim only if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

A convicted criminal may not bring a suit challenging the validity of a conviction without first having the conviction set aside. Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). This applies to federal prisoners filing Bivens actions as well as state prisoners. Clemente v. Allen, 120 F.3d 703, 705 (7th Cir. 1997) (holding that Heck analysis applies to Bivens actions). Plaintiff's claims expressly challenge the validity of his criminal convictions. He claims that defendants violated his constitutional rights and that these violations led to an improper conviction. His conviction has not however been set aside by any court. Plaintiff is therefore barred from using this civil action to launch a collateral attack on the conviction.

CONCLUSION

For the foregoing reasons, defendants' motion to dismiss is granted.


JAMES B. MORAN
Senior Judge, U. S. District Court

 June 10, 2003.